

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Public Inquiry Concerning the
Terms of 39 U.S.C. 404(d)

Docket No. PI2016-2

SUPPLEMENTAL COMMENTS OF ELAINE MITTLEMAN ON THE
COMMISSION'S JURISDICTION TO REVIEW POSTAL SERVICE
DETERMINATIONS TO CLOSE POST OFFICES

(February 16, 2016)

This is a supplement to my comments on Docket No. PI2016-2. This supplement discusses information received about the Falls Church post office and Pimmit Branch in Northern Virginia. Attached to this supplement are pertinent documents.

The case involving the Pimmit Branch in Virginia [Order No. 1159 Dismissing Appeal, issued January 20, 2012] is an example of the Commission's violation of section 404(d)(5). The determination of the Postal Service was to close the Pimmit Branch. The Commission instead decided the action was a rearrangement of facilities, which is not a term in the regulations. The Commission then decided it did not have jurisdiction, even though the Postal Service determination to close the Pimmit Branch is clearly reviewable pursuant to 39 U.S.C. § 404(d)(5).

I think that a review of the process involving the Pimmit Branch highlights many problems and shortcomings with the Commission's review of post office closings. The Pimmit post office was in the Tysons Corner area and in zip code 22043. This is a thriving area with much planned development. Any business that serves customers would certainly want to have a location in the Pimmit community. Instead of addressing the merits of a misguided decision by the Postal Service to close the Pimmit post office, the Commission decided on its own – and in violation of 39 U.S.C. § 404(d)(5) – that it did not have jurisdiction to review the determination of the Postal Service to close the Pimmit post office. It must be understood that the regulations for closings and relocations do not include the concept of rearrangement of facilities in the community. That concept is from the 1982 *Oceana* order and predates the regulations about closings.

COMMISSION ORDER DISMISSING APPEAL OF PIMMIT BRANCH

By letter dated September 14, 2011, the Postal Service notified customers at the Pimmit Branch that it would discontinue operations on November 10, 2011. The letter included no explanation as to the reason for the closing and provided no information about the record supporting the decision or the options for an appeal of the decision. There had been no community meeting to discuss the closure.

I am an attorney. When I found out about this letter, I began studying the issues involving post office closings, because I was personally affected by the closing of the Pimmit post office.

Further, I understand that there has been an ongoing dispute between the Postal Service and the Commission about the treatment of stations and branches. However, it appears that the new regulations pertain to stations and branches, so that dispute seems to be resolved and is no longer at issue.

In addition, I believe that the distinction about stations and branches, such as in Northern Virginia, is no longer valid. For example, there is no main post office in Falls Church. The management of the various postal facilities is at Merrifield, Virginia.

In describing the process leading up to the decision to close the Pimmit Branch, the Commission stated in the Order at page 6 that:

On November 20, 2009, the Post Office Review Coordinator prepared a Post Office Closing or Consolidation Proposal Fact Sheet (PS Form 4920) as part of the Pimmit Branch discontinuance study. *Id.*; Item No. 8. He gave the following reason for closing the Pimmit Branch: “Part of DAR Justification for Falls Church Main Office project.” *Id.* at 1. (Response to Item No. 7).

The Proposal to Close the Pimmit Branch, dated June 21, 2010, stated at page 5 that “[t]he DAR for the Falls Church Finance Unit indicated that the Pimmit Branch would be closed.”

The Commission explained in the Order at n. 27 that “DAR” stands for “Decision Analysis Report,” which is “a document prepared by the requiring authorization to recommend an investment for approval, and it is used for decisions regarding high dollar-value projects.” However, even though the reason given for closing the Pimmit Branch was “Part of DAR Justification for Falls Church Main Office project,” the DAR is not included in the Administrative Record. Thus, the Commission referred to a document, the DAR, which was not part of the Administrative Record. The mere reference to the DAR does not explain its contents or provide record support for the reason to close the Pimmit Branch.

The Commission referred to the concept of rearrangement in the Order at page 11, when it stated:

In this case, as in the *Oceana Station* and *Ecorse Branch* proceedings, the closure of the postal facility is part of a broader plan to rearrange the postal network.

The Commission further stated at page 12 that:

The Administrative Record in this proceeding demonstrates that, from the outset, discontinuance of the Pimmit Branch was possible as part of a broader plan to rearrange the postal network in Falls Church. ... The existence of this plan is amply supported by the Administrative Record.

The Final Determination to close the Pimmit Branch, dated June 20, 2011, discussed the effect on the community. The Final Determination stated that the “Pimmit Area is an unincorporated community located in Fairfax County. The community is administered politically by the Fairfax County Government.” The Final Determination made it clear that the community at issue was Pimmit and not Falls Church. Further, the Final Determination at page 3 stated that one of the disadvantages was “[t]he loss of a retail outlet in the community.” The Final Determination did not reference, discuss or rely upon the DAR.

DAR FOR FALLS CHURCH MAIN OFFICE PROJECT

The lack of a postal facility in the Pimmit community and zip code 22043 remains a very significant problem. As a result, I have continued to seek assistance in having a postal facility placed in the Pimmit and 22043 area. I have been asked – why was the Pimmit Branch closed? I don’t have any substantive answer, in part because the DAR was not included in the record. The Commission should be sensitive to how troubling and inconvenient it is for the Pimmit Branch to be closed. The Falls Church Finance Unit is not in the Pimmit community.

I decided that it would be useful to attempt to obtain the DAR in the hope of understanding the basis for the decision of the Postal Service to close the Pimmit Branch. On September 10, 2015, I submitted a Freedom of Information Act

request to the Postal Service. The request included the DAR for the Falls Church Main Office project.

After some correspondence and an appeal, I received a letter dated December 28, 2015, from Christopher T. Klepac, Chief Counsel, Federal Compliance, Office of the General Counsel, USPS. The letter stated that:

After carefully reviewing your request and consulting with the District, we are releasing 5 pages of record material to you: Decision Analysis Report dated June 15, 2007. Certain data has been redacted pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3), and FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

...

Please find the additional responsive records attached in hard copy form. The June 15, 2007 DAR responds to the second request in your letter asking for “the Decision Analysis Report [DAR] for the Falls Church Main Office project.

The five pages released include the following:

1. The cover sheet which states, “Field Facility Decision Analysis Report, Falls Church, VA 22046, Retail Unit, Alternate Quarters” and is dated June 15, 2007.
2. A page describing the Background/Problem Definition and discussing the Falls Church VA Main Post Office at 301 West Broad Street. The discussion states that “[t]he City of Falls Church agreed to help the USPS find an alternate site or facility for the operation ...”
3. A page describing the Falls Church VA Seven Corners Finance Unit and Alternatives Analyzed and Eliminated. The information about the Alternatives Analyzed and Eliminated is completely redacted.
4. A page that lists post offices within a ten-mile radius of the facility. The Pimmit Branch is included in this list. Other items

on this page are redacted.

5. A signature page.

A review of the five redacted pages does not provide any information about the determination to close the Pimmit Branch.

In a letter dated January 15, 2016, Natalie A. Bonanno, Ethics Counsel, USPS, wrote:

This responds to your email dated January 14, 2016, alleging that the Postal Service's search for responsive records pursuant to the above-referenced Freedom of Information Act (FOIA) request was inadequate.

By letter to the Manager of the Records Office dated September 10, 2015, you requested the following documents:

1. The lease for the Falls Church Finance Station, 800 West Broad Street, Falls Church, VA 22046. The property ID is 513126005.
2. The DAR [Decision Analysis Report] for the Falls Church Main Office project. On June 8, 2009, the Postal Service announced that the Falls Church post office retail operations were being relocated from 301 W. Broad Street to 800 W. Broad Street.

... By letter dated December 23, 2015, this Office provided you with the Falls Church Main Office DAR dated June 15, 2007, with certain data redacted ... The DAR itself references the Falls Church Post Office located at 301 W. Broad St.

In an email dated January 14, 2016, you stated that the June 15, 2007 Falls Church Main Office DAR is the wrong document. You clarified that you are seeking the 2009 Falls Church Main Office DAR that includes references to the Pimmit Branch. ... The additional details that you provided via email about the document that you are seeking constitutes a new FOIA request, and will

be processed by the Records Office accordingly and assigned a new case number.

In a letter dated February 4, 2016, Vicky Miles, USPS Facilities Service Office, wrote:

This is an acknowledgement to your Freedom of Information Act (FOIA) request of January 16, 2016, in which you ask we do an additional search of our files for a second DAR on the Falls Church Main Office with reference to the Pimmit Branch Post Office.

Based on your description of records sought, a second search was conducted of the files; and despite this diligent search, we were unable to locate responsive documents.

I have had a conversation with Vicky Miles. She explained to me the efforts she made to look for pertinent documents about the DAR and the Pimmit Branch. I was very impressed with her diligence and the efforts she made in the search. In fact, it was reassuring to talk to someone at the Postal Service who was so conscientious and pleasant in carrying out their responsibilities. However, it appears that no DAR can be found that discussed the decision to close the Pimmit Branch.

CONCLUSION

The Commission found that it did not have jurisdiction to review the closing of the Pimmit Branch. This decision was based on the concept of rearrangement of facilities within the community. That concept, which was created in the *Oceana* case, is no longer valid (if it was ever valid).

The Commission did not address the merits of the decision to close the Pimmit Branch, which purportedly was based on the DAR. However, the DAR is not in the Administrative Record. Instead of reviewing the DAR, the Commission decided it did not have jurisdiction.

In an effort to determine why the Postal Service decided to close the Pimmit Branch, I requested the DAR through FOIA. Based on the responses I received, there does not appear to be a DAR to support or provide an explanation of the decision to close the Pimmit Branch.

It is important to understand that the Pimmit Branch served the Pimmit community and zip code 22043. There is no postal facility now in that community and zip code. The Pimmit area is near Tysons Corner and there should be a postal facility in that area.

The example of the Pimmit Branch shows the wasteful and dysfunctional process concerning post office closings. The Commission decided on its own that it did not have jurisdiction to review the determination to close the Pimmit Branch. By any measure of business decision-making, customer service or marketing, the Pimmit area is one that should have a top-notch postal facility. Instead, the Pimmit community and zip code 22043 have no postal facility.

I am hopeful that the Postal Service will take the initiative and put a postal facility in the Pimmit community and zip code 22043.

Respectfully submitted,

/s/ Elaine Mittleman

Elaine Mittleman

2040 Arch Drive

Falls Church, VA 22043

(703) 734-0482

elainemittleman@msn.com

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Pimmit Branch
Falls Church, Virginia

Docket No. A2011-90

ORDER DISMISSING APPEAL

(Issued January 20, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 27, 2011, Elaine J. Mittleman (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Pimmit Branch located near Falls Church, Virginia (Pimmit Branch).² On October 26, 2011, Karl Ritchey intervened.³ The Petition for Review is dismissed for lack of jurisdiction.

II. PROCEDURAL HISTORY

On September 29, 2011, the Commission established Docket No. A2011-90 to consider the appeal, designated a Public Representative, informed the Postal Service that Petitioner had filed an application for suspension of the Final Determination, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

² Petition for Review received from Elaine J. Mittleman regarding the Falls Church, Virginia post office 22043, September 27, 2011 (Petition). Falls Church is a suburb of Washington, DC.

³ Petition for Review received from Karl Ritchey regarding the Falls Church, Virginia post office 22043, October 26, 2011. The deadline for filing appeals having passed, the Commission treated the Ritchey Petition as a notice of intervention. See Order Denying Application for Suspension, November 9, 2011, at 1, n.2 (Order No. 958).

⁴ Order No. 882, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 29, 2011.

On October 7, 2011, the Postal Service filed its opposition to the application for suspension.⁵ On October 12, 2011, the Postal Service filed the Administrative Record with the Commission.⁶ On the same day Petitioner filed a reply to the Postal Service's opposition to the application for suspension,⁷ and the Postal Service supplemented its opposition.⁸ On November 8, 2011, the Commission posted a letter of support for the application for suspension received from John W. Foust, Dranesville (VA) District Supervisor.⁹ On November 9, 2011, Petitioner supplemented her application for suspension.¹⁰ Also on November 9, 2011, the Commission denied the application for suspension. See Order No. 958. On November 10, 2011, Petitioner filed a motion for reconsideration of Order No. 958.¹¹ The Postal Service closed the Pimmit Branch effective November 12, 2011.¹² On November 17, 2011, Petitioner filed a motion to reopen the Pimmit Branch.¹³ The Postal Service filed its opposition to the motion on

⁵ Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, Virginia 22043, October 7, 2011.

⁶ The Administrative Record is attached to the United States Postal Service Notice and Application for Non-Public Treatment, October 12, 2011 (Administrative Record). The Administrative Record includes, as pages 4-9 of Item No. 25, the Final Determination to Close the Pimmit Branch, VA Office and Continue to Provide City Delivery Service (Final Determination).

⁷ Reply of Petitioner to Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, Virginia 22043, October 12, 2011 (Petitioner's Reply).

⁸ United States Postal Service Notice and Application for Non-Public Treatment, October 12, 2011.

⁹ The letter is also attached to the pleading identified in footnote 10.

¹⁰ Petitioner's Supplement to Application for Suspension Falls Church, Virginia 22043, November 9, 2011.

¹¹ Motion of Petitioner for Reconsideration of Order No. 958, November 10, 2011.

¹² Postal Bulletin 22325, December 1, 2011, at 51.

¹³ Motion of Petitioner to Reopen Pimmit Branch, November 17, 2011.

November 23, 2011.¹⁴ Petitioner filed a reply to the Postal Service's opposition on November 29, 2011.¹⁵

During the course of the proceeding, the Commission ruled on two motions of Petitioner to supplement the Administrative Record.¹⁶ Petitioner first sought an order directing the Postal Service to provide information on the possible relocation of a postal facility in Falls Church, directing the Postal Service to post documents relating to her appeal at the Pimmit Branch, and revising the procedural schedule.¹⁷ In a second motion, Petitioner asked the Commission to direct the Postal Service to supplement the Administrative Record to explain why it chose the Pimmit Branch to study for possible closing, to correct references in the Final Determination to "Chevy Chase [Bank]," which Petitioner asserted no longer exists, and to revise the procedural schedule.¹⁸

¹⁴ United States Postal Service Answer in Opposition to Motion of Petitioner to Reopen Pimmit Branch, November 23, 2011.

¹⁵ Reply of Petitioner to Opposition of Postal Service to Motion to Reopen Pimmit Branch, November 29, 2011.

¹⁶ Order No. 1005, Order on Motions to Supplement the Record and Modifying Procedural Schedule, November 29, 2011. Petitioner has since filed other motions. One of those motions seeks to have the 120-day deadline for this proceeding extended by 5 days. Motion of Petitioner to Reset the Expiration Date of the Commission's 120-Day Decisional Schedule, January 17, 2012, at 2. The Postal Service responded to that motion on January 19, 2012. Answer of United States Postal Service in Opposition to Petitioner's Motion Dated January 17, 2012, to Reset the Expiration Date of the Commission's 120-Day Decisional Schedule, January 19, 2012. The procedural schedule sets January 20, 2012 as the deadline for issuing a decision in this appeal. Petitioner's appeal was posted on the Commission's website on September 27, 2011. If one uses that date as the "date received" for the appeal, the 120-day deadline for issuing a decision would be January 25, 2012. However, by statute, the Commission must use the postmark of the appeal as the "date received." 39 U.S.C. § 404(d)(6)(A). Petitioner's appeal was postmarked September 22, 2011, which produces a deadline of January 20, 2012.

¹⁷ Motion of Petitioner to Request the United States Postal Service to Supplement the Record Concerning the Relocation of the Main Post Office in Falls Church, Virginia 22046, October 18, 2011.

¹⁸ Motion of Petitioner to Request the United States Postal Service to Supplement the Record Concerning the Pimmit Branch Study Falls Church, Virginia 22043, November 7, 2011.

The Postal Service opposed supplementing the Administrative Record but did not oppose adjusting the procedural schedule.¹⁹ The Commission denied the requests to supplement the Administrative Record but did extend the deadlines for filing briefs. Order No. 1005 at 5.²⁰ The Commission also directed the Postal Service to file “notice of any events that have made material facts (or findings) relied upon in the Final Determination obsolete or no longer valid.” *Id.* The Postal Service responded on December 2, 2011.²¹

On November 21, 2011, the Postal Service filed comments requesting that the Commission affirm its Final Determination.²² On December 9, 2011, Petitioner filed her initial brief.²³ On December 16, 2011, the Postal Service filed supplemental comments.²⁴ On December 22, 2011, Petitioner filed a reply brief.²⁵

III. BACKGROUND

Planning for the closure of the Pimmit Branch began sometime before April 9, 2009. On that date, the Manager of Post Office Operations for the Northern Virginia District requested authorization to study the Pimmit Branch for closure because of the establishment of a new postal facility:

A new facility is being proposed for the Main Post Office at Falls Church which will contain Retail and Post Office Box operations. The purpose of this investigation is to determine the feasibility of

¹⁹ Answer of United States Postal Service in Opposition to Petitioner’s Motion to Request the United States Postal Service to Supplement the Record, October 25, 2011; Answer of United States Postal Service to Petitioner’s Motion Dated November 7, 2011, to Request the United States Postal Service to Supplement the Record, November 14, 2011.

²⁰ Order on Motions to Supplement the Record and Modifying Procedural Schedule, November 29, 2011 (Order No. 1005).

²¹ United States Postal Service Response to Order No. 1005, December 2, 2011.

²² Comments of United States Postal Service, November 21, 2011 (Postal Service Comments).

²³ Initial Brief of Petitioner Elaine J. Mittleman, December 9, 2011.

²⁴ Supplemental Comments of United States Postal Service, December 16, 2011 (Postal Service Supplemental Comments).

²⁵ Reply Brief of Petitioner Elaine J. Mittleman, December 22, 2011.

eliminating the Pimmit Branch and combining its operations with the proposed new retail facility for the main office.

Administrative Record, Item No. 1. Authorization to conduct the requested discontinuance study was given that same day, April 9, 2009. *Id.*

By separate letters dated April 29, 2009, the Post Office Review coordinator notified the presidents of the American Postal Workers Union and the National Association of Postal Supervisors of the Postal Service's intent "to conduct a study to determine the feasibility of eliminating the Pimmit Branch and consolidating operations with the new retail unit that is going to serve the Falls Church Main Post Office." *Id.*; Item No. 2.²⁶

On November 20, 2009, the Post Office Review Coordinator prepared a Post Office Closing or Consolidation Proposal Fact Sheet (PS Form 4920) as part of the Pimmit Branch discontinuance study. *Id.*; Item No. 8. He gave the following reason for closing the Pimmit Branch: "Part of DAR Justification for Falls Church Main Office project."²⁷ *Id.* at 1 (Response to Item No. 7).

On June 8, 2009, the Postal Service announced that the Falls Church post office retail operations and Post Office Box services were being relocated from 301 Broad Street, Falls Church, Virginia, to 800 West Broad Street, Falls Church, Virginia. United States Postal Service, Postal News, Release No. 09-015.²⁸ The relocation was described in the following terms:

The move is necessary to make way for the new Falls Church City Center currently under construction. The new City Center will be built on the city-owned public parking lot currently used by Broad

²⁶ Letter to Annette August-Taylor from Dennis E. Voorhees, April 29, 2009, at 1, *Id.*; Item No. 2 at 1 (Taylor/Voorhees Letter); Letter to Lloyd Cox from Dennis E. Voorhees, April 29, 2009, at 1, *Id.* at 2. (Cox/Voorhees Letter).

²⁷ The acronym "DAR" stands for "Decision Analysis Report," which is described as "a document prepared by the requiring authorization to recommend an investment for approval, and it is used for decisions regarding high dollar-value projects." Postal Service Supply Principles and Practices, § 1.16.4 Justify Postal Service Investment. Section 1.16.4 can be found at http://about.usps.com/manuals/spp/html/spp1_079.htm.

²⁸ Release No. 09-015 can be found at http://about.usps.com/news/state-releases/va/2009/va_2009_0608.htm.

Street Postal Customers. All post office box customers have been notified of the move and will receive mail boxes at the new retail unit. The facility at 301 Broad Street will continue to house carrier delivery operations....Customers will pick up 'left notice' accountable mail, parcels, and hold mail from the new 800 [West] Broad Street location.

Id. at 1. The new facility is approximately five blocks west of the Falls Church post office and 0.5 miles closer to the Pimmit Branch.²⁹

In a January 7, 2010 letter to post office box holders transmitting questionnaires, the senior manager of Post Office Operations stated that “the fact that we have the Falls Church main post office located approximately 1.7 miles away suggests that the continuation of the Pimmit classified branch may not be warranted.” Administrative Record, Item No. 9 at 4 (emphasis in original). He requested that completed questionnaires be returned by January 19, 2010. *Id.*

The final decision to close the Pimmit Branch was made on June 20, 2011. See Final Determination at 5. This decision was publicly announced on September 14, 2011, in a letter advising customers that the Pimmit Branch would close on November 10, 2011. Administrative Record, Item No. 27 at 1.

Prior to closing on November 10, 2011, the Pimmit Branch provided retail postal services and service to 303 post office box customers. Final Determination at 5. No delivery customers were served through this post office. Administrative Record, Item No. 3. Delivery customers picked up large packages and accountables at the Falls Church post office. *Id.* Item No. 5. The Pimmit Branch, an EAS-22 level facility, had retail access hours of 8:30 a.m. to 2:00 p.m. and 3:00 p.m. to 5:00 p.m., Monday through Friday, and was closed on Saturday. *Id.* at 5.

After the closure, retail services were available from the new Falls Church facility at 800 W. Broad Street, Falls Church, Virginia, located 2 miles away, as well as several

²⁹ The distances are taken from MapQuest, which also shows that all three facilities are located along Virginia Route 7.

other locations within 2.2 miles of the Pimmit Branch.³⁰ *Id.* The 800 West Broad Street post office is an EAS-22 level post office, with retail hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:30 p.m. on Saturday. Six-hundred-eight (608) post office boxes are available. *Id.* Carrier delivery customers continue to use the Falls Church 22043 name and ZIP Code. The 303 post office box customers were required to change their addresses. *Id.*; Administrative Record, Item No. 27.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Pimmit Branch. She asserts that the Postal Service did not follow procedures required by law. Petition at 1-2. She also asserts that the Pimmit Branch is profitable, implying that there are no economic savings from closing the branch and that the Postal Service did not address concerns of walk-in customers. *Id.* at 2. She argues that carrier pickup is not a feasible alternative for her shipping needs and that customers will switch to competing carriers and that the 800 West Broad Street post office is an inconvenient alternative to the Pimmit Branch because of traffic and parking congestion as well as the length of time to travel by public transportation. *Id.* at 2-3. Finally, she asserts that closing the Pimmit Branch violates the community planning ethic of promoting pedestrian over vehicular traffic. *Id.* at 3.

Postal Service. The Postal Service argues that the Commission should either dismiss the appeal or affirm the determination to close the Pimmit Branch. Postal Service Comments at 1-2, 8; Postal Service Supplemental Comments at 2-5.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record

³⁰ MapQuest estimates the driving distance between the Pimmit branch and the Falls Church Finance Unit to be approximately 1.7 miles (4 minutes driving time).

that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

The Postal Service argues that Petitioner's appeal does not fall within the Commission's jurisdiction. It offers two grounds for dismissal. First, the Postal Service argues that postal branches such as the Pimmit Branch are not "post offices" as that term is used in section 404(d). Second, it argues that patrons of the Pimmit Branch still have access to retail services in Petitioner's area of Northern Virginia, and the closing of the Pimmit Branch does not constitute a "closing" under Commission precedent, citing the Commission's order dismissing the appeal of the closing of the East Elko station in Elko, Nevada.³¹ Response of United States Postal Service to Petitioner's Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, VA 22043, October 7, 2011, at 2-3; United States Postal Service Notice and Application for Non-Public Treatment, October 12, 2011, at 2-3; Postal Service Comments at 2; Postal Service Supplemental Comments at 4-5.

The Commission and the Postal Service have long disagreed about the meaning of "post office" in section 404(d).³² The Commission has held that a postal station or

³¹ Docket No. A2010-3, *In re East Elko Station, Elko, Nevada*, Order No. 477, June 22, 2010 (*East Elko*).

³² See, e.g., Docket No. A82-10, *In re Oceana Station, Virginia Beach, Virginia*, Order No. 436, June 25, 1982, at 4 (*Oceana Station*).

branch is a “post office.” The Commission has considered the Postal Service’s arguments in previous decisions and will not revisit the dispute here.³³

The *East Elko* decision cited by the Postal Service relied upon two other orders in which the Commission found closings of stations or branches to be rearrangements of postal facilities within a community and not closings subject to review under section 404(d). Those orders dealt with factual situations that are strikingly similar to the situation presented here.

In *Oceana Station*, the Postal Service sought to close the station as part of a plan to rearrange retail and carrier facilities in an area of Virginia Beach. The plan included the construction of a new facility and the shifting of services and employees around the area to enhance the postal network.

³³ See Docket No. A2006-1, *In re Observatory Finance Station Pittsburgh, PA 15214-0651*, Order No. 1480, September 29, 2006, at 6-12 (*Observatory Station*). For a recent explication of the Postal Service’s position, see Docket No. A2010-3, Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), April 19, 2010.

The Commission stated:

The Postal Service's decision to close the Oceana station must be considered within the context of the Postal Service's other actions in the area. The Postal Service's decision constitutes a moving of facilities within the community rather than an elimination of facilities or a change in management within the scope of the statutory provisions. If the Postal Service had decided to close the Oceana station and build a new facility across the street, the action would not be a closing within the meaning of the statute. That principle may be equally apposite—as we think it is here—when the Postal Service is considering the set of offices serving a community.

Oceana Station at 7-8.

In *Ecorse Branch*,³⁴ the Postal Service constructed a new retail facility 1.7 miles away and decided to close the Ecorse Branch since customers could obtain the same services at the new facility. The Commission noted that:

[T]he Administrative Record includes information showing that the Postal Service opened a new, larger facility 1.7 miles away from the Ecorse Branch. This new River Rouge facility has the same retail services as the Ecorse Branch and was designed, among other things, to take over and replace the workload and retail services offered at the Ecorse Branch. The opening of this new facility was one of the chief justifications for the Postal Service's decision to close the Ecorse Classified Branch.

Ecorse Branch at 6.

In this case, as in the *Oceana Station* and *Ecorse Branch* proceedings, the closure of the postal facility is part of a broader plan to rearrange the postal network. In this case, the Postal Service states that the new Falls Church facility at 800 West Broad Street is located 2 miles away from the Pimmit Branch.³⁵ Final Determination at 2. In *Oceana*, the new facility was 4 miles from the station being closed. *Oceana Station* at 4. In *Ecorse Branch*, the new facility was 1.7 miles from the branch being closed. *Ecorse Branch* at 6.

³⁴ Docket No. A2007-1, *Ecorse Classified Branch, Ecorse, Michigan*, Order No. 37, October 9, 2007 (*Ecorse Branch*).

³⁵ According to MapQuest, the distance is 1.7 miles. See n.29, *supra*.

The Administrative Record in this proceeding demonstrates that, from the outset, discontinuance of the Pimmit Branch was possible as part of a broader plan to rearrange the postal network in Falls Church. This does not mean that discontinuance was a foregone conclusion at the outset. Rather, it was a consideration as the Postal Service planned services to be available to the Falls Church community.

In this proceeding, the Postal Service entered into a long-term lease for the facilities at 800 West Broad Street with the expectation of closing the Pimmit Branch. In *Oceana Station* and *Ecorse Branch*, the Postal Service built new facilities that replaced the facilities being closed. In all three of these cases, the facility closures were part of a broader plan to rearrange postal networks. Indeed, Petitioner herself acknowledges that “[t]he plan to close the Pimmit Branch was presumably an integral part of the planning for the relocation of retail services to 800 W. Broad Street.” Petitioner’s Reply at 11. The existence of this plan is amply supported by the Administrative Record. See Administrative Record, Item No. 1 at 1 (Authority to Conduct Investigation); *id.* Item No. 2 at 1-2 (Taylor/Voorhees Letter and Cox/Voorhees Letter); *id.* Item No. 8 (Post Office Closing or Consolidation Proposal Fact Sheet, Response to Item No. 7); *id.* Item No. 9 (Questionnaire Transmittal Letter); and *id.* Item No. 22 at 7 (Proposal to Close the Pimmit Branch, Falls Church, Virginia).

VI. CONCLUSION

The closing of the Pimmit Branch was part of a rearrangement of retail facilities in the Falls Church, Virginia area. The Commission has consistently held that the requirements of section 404(d) do not apply to such rearrangements. Accordingly, this proceeding is dismissed. Because the Commission lacks jurisdiction to consider Petitioner’s substantive arguments, her pending motions are denied.

It is ordered:

1. Docket No. A2011-90 is dismissed for lack of jurisdiction.
2. All pending motions not granted herein are hereby denied.

By the Commission.

Ruth Ann Abrams
Acting Secretary

Vice Chairman Langley not participating.

FINAL DETERMINATION TO CLOSE

THE

PIMMIT BRANCH, VA OFFICE

AND CONTINUE TO PROVIDE

CITY DELIVERY SERVICE

I. RESPONSIVENESS TO COMMUNITY POSTAL NEEDS

The Postal Service has determined to close the Pimmit Branch in Falls Church, VA and continue to provide city delivery service. Post Office Box and retail services will be provided at the Falls Church Finance Unit, VA 22040, located 2 miles away.

Service will be provided to roadside mailboxes installed by customers on the carrier's line of travel.

A classified branch is operated by career postal employees and provides the same services as an independent post office, including postage meter setting and acceptance of permit mail.

The Walk In Revenue and customer transactions have declined at the Pimmit Branch. There are only 303 Post Office Boxes rented. The surrounding Station and Branches, Stamps on Consignment locations and city delivery routes should provide the customers of the Pimmit area sufficient alternatives for their delivery and retail needs.

The Pimmit Branch, an EAS-22 level, provides service 37.5 hours a week from 8:30 am to 2:00 p.m. and 3:00 to 5:00 p.m., Monday through Friday, and closed on Saturdays to 303 post office box customers. Retail services include the sale of stamps, stamped paper, and money orders; special services such as registered, certified, insured, COD, and Express Mail; and the acceptance and dispatch of all classes of mail. Daily retail window transactions average 441. Office receipts for the last three years were: \$687,149 in FY 2009; \$844,764 in FY 2008; and \$821,543 in FY 2007. There are no permit mail customers.

When this final determination is implemented, Post Office Box and retail services will be provided by the Falls Church Finance Unit, an EAS-22 level office located 2 miles away. Window service hours at the Falls Church Finance Unit are from 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:30 p.m. on Saturday. There are 608 Post Office Boxes available.

On January 7, 2010, 303 questionnaires were distributed to the Post Office Box customers of the Pimmit Branch. Questionnaires were also available over the counter for retail customers at the Pimmit Branch. 125 questionnaires were returned. 10 responses were favorable, 56 unfavorable, and 59 expressed no opinion regarding the proposed alternate service.

The following postal concerns were expressed on the returned questionnaires, from customer letters, on the petition, and from the congressional inquiries:

1. **Concern:** Customers were concerned about senior citizens.

Response: Carrier service is beneficial to many senior citizens and those who face special challenges because the carrier can provide delivery services. Customers do not have to make a special trip to the post office for service. Special provisions are made for hardship cases or special customer needs. Elderly customers should expect the same level of assistance and helpful service from the surrounding post offices.

2. **Concern:** Customers were concerned about the traffic and additional travel time to go to another post office.

Response: The Postal Service has developed a number of convenient options that can save customers a trip to the Post Office. For instance, customers can buy stamps online on our Web site at www.usps.com, by phone at 1-800-STAMPS24, or by mail. Stamp orders are delivered directly to customer mailing addresses. Our Click-N-Ship online mailing service will calculate and print mailing labels with postage. It also offers free Delivery Confirmation or Signature Confirmation as an option. Free carrier pickup may be requested

-2-

online and is available with Express Mail Overnight Guaranteed, Priority Mail and International Mail. Customers can also place their mail on hold, file a change-of-address order, or request redelivery of an item of which a notice was left by calling 1-800-ASK-USPS or visiting www.usps.com.

3. **Concern:** Customers were concerned that the parking at the Fall Church Post Office was insufficient and dangerous.

Response: The planning for the new Falls Church Post Office took into consideration additional parking. Available parking spaces should not be an issue. The Ingress and Egress to the parking area is in compliance with all local ordinances and codes. During rush hour, it may be difficult to make left hand turns on to Broad Street. It is recommended to make right hand turns during the high traffic time period.

4. **Concern:** Customers were concerned that the clerks at the Falls Church Post Office were rude and inefficient.

Response: Employee courtesy is always a concern of postal managers. Postal employees receive periodic instructions regarding employee courtesy. We do not condone our employees' execution of their duties in an unprofessional or discourteous manner. The postmaster of Falls Church has been notified of your concern.

5. **Concern:** Customers were concerned that they would not receive the exceptional service that they received at the Pimmit Branch.

Response: Courteous and helpful service will be provided by personnel at the Falls Church Main Post Office and other post offices in the area.

6. **Concern:** Customers were concerned because the lines were long at the Falls Church Post Office.

Response: The Postal Service™ shares the problem of occasional long lines with banks, supermarkets, and other retail outlets. Lines occur most often on Mondays, day after holidays, during lunch hours, and near closing times. We make a concerted effort to match our staffing schedules with the known peaks of customer traffic. To minimize wait time, we rely upon our Postmasters to take steps to remedy the situation and ensure that customers do not have to wait in line an unreasonable or excessive amount of time. The postmaster of Falls Church was notified of this concern.

7. **Concern:** Customers were concerned about the dissemination method of the questionnaires and time frames allowed for community feedback.

Response: Each Post Office Box customer received a questionnaire and questionnaires were available for walk in customers at the retail unit from January 7, 2010 to January 21, 2010. It should be noted that all comments received up to June 7, 2010 have been taken into consideration.

8. **Concern:** Customers were concerned about the Change of Address Policy.

Response: Mail will be forwarded in accordance with postal regulations, and change of address forms are available from the Postal Service to assist customers in notifying correspondence of the change. First Class mail is currently forwarded for a period of 12 months.

9. **Concern:** Customers were concerned about where they could deposit outgoing mail if the Pimmit Branch were to close.

Response: The Postal Service intends to have a collection box in this area for the deposit of mail.

10. **Concern:** Customers were concerned about the cost of printing new stationary and envelopes and the need for advance notification of the effective date.

Response: Customers would not be expected to incur the cost of reprinting their business stationary and envelopes immediately. They should be able to exhaust their current supply and just notify their customers of their new address in their every day correspondence with them. If a decision is made to actually close the Pimmit Branch, we will give as much of an advance notice as possible in order to minimize the impact to our customers.

11. **Concern:** A customer was concerned about lost and damaged mail at the Falls Church Main Post Office.

Response: Reports of mail loss is a great concern. Regrettably, when such instances are brought to our attention, there is no sure way of determining what may have happened. With the large volume of mail moving through our network each day, it is literally impossible to trace a single piece of regular First-Class Mail. Only Registered Mail, which is accounted for during its entire journey, can be accurately traced. The Postal Service appreciates the reporting these instances to us so we can work toward improvements.

12. **Concern:** Customers wanted Post Office Box service but did not want to go to the Falls Church Post Office.

Response: For customers that require Post Office Box Service, there are other options available other than the Falls Church Post Office. The Dunn Loring Branch of Vienna Virginia is located only 2.2 miles way for their convenience.

13. **Concern:** Customers were concerned about the reduction of hours at Pimmit Branch.

Response: A reduction of the hours the retail windows were open had been previously implemented at the Pimmit Branch. This was due to the fact that the hours of operation were not being supported by customer traffic or revenue transactions.

Some advantages of alternative delivery and retail service proposal are:

1. Carrier delivery service is beneficial to some senior citizens, the handicapped, and working people since customers will no longer need to travel to the Post Office to pick up their mail.
2. Stamps by Mail order forms are provided for customer convenience and three Stamp on Consignment locations.
3. Customers opting for carrier service will have 24-hour access to their mail.
4. Savings for the Postal Service contribute in the long run to stable postage rates and savings for customers.
5. Customers opting for carrier service will no longer have to pay Post Office box fees.

Some disadvantages of alternative delivery and retail service proposal are:

1. The loss of a retail outlet in the community.
2. A change in mailing address.

Taking all available information into consideration, the Postal Service concludes this proposal should provide the customers of the Pimmit Area sufficient alternatives for their delivery and retail needs.

II. EFFECT ON COMMUNITY

The Pimmit Area is an unincorporated community located in Fairfax County. The community is administered politically by the Fairfax County Government. Police protection is provided by Fairfax County, and fire protection is provided by Fairfax County. The community is comprised of retired people, those who commute to work at nearby cities and work in local businesses.

There are numerous religious institutions and businesses in the community. Residents conduct business in the Pimmit Area and travel to nearby communities for other supplies and services.

Nonpostal services provided at the Pimmit Branch will be available at the Falls Church Finance Unit. Government forms normally provided by the post office will also be available at the Falls Church Finance Unit or by contacting their local government agency.

The following nonpostal concerns were expressed on the returned questionnaires and on the congressional inquiry:

1. **Concern:** A customer felt the Pimmit Branch should not be discontinued since she was a tax payer.

Response: The United States Postal Service has not been funded by tax dollars since the early 1970's. We must meet our expenses by the revenues we generate. Operational savings for the Postal Service, contributes in the long run to stable postage rates and savings for our customer.

2. **Concern:** Customers expressed concern that the discontinuance of the Pimmit Branch would impose a hardship on them because they operate businesses in the area and have an ecommerce business. They stated that it may force them to utilize our competitors more.

Response: If a decision is made to close the Pimmit Branch, we will have a representative from our Sales Group contact the customer to explore ways to retain their business.

Based on the information obtained in the course of this discontinuance study, the Postal Service concludes this proposal will not adversely affect the community.

III. EFFECT ON EMPLOYEES

There are two Full Time employees at the Pimmit Branch which includes a Level 7 Clerk Finance Station and a Level 6 Sales and Service Distribution Associate. These employees will be excessed in accordance to the Article 12 provisions of the National Agreement between the American Postal Workers Union and the United States Postal Service. No other postal employee will be adversely affected.

-5-

IV. ECONOMIC SAVINGS

The Postal Service estimates an annual savings of \$117,743 with a breakdown as follows:

Employee Salaries	\$27,231
Inter-station Transportation	6,720
Rental Costs	78,676
Utilities	3,184
Maintenance	+1,932
Total Annual Costs	<u>\$117,743</u>
Less Annual Cost of Replacement Service	-0
Total Annual Savings	\$117,743

V. OTHER FACTORS

The Postal Service has identified no other factors for consideration.

VI. SUMMARY


The Postal Service is proposing to close the Pimmit Branch in Falls Church, VA and provide Post Office Box and retail services at the Falls Church Finance Unit, located 2 miles away. In addition, The Dunn Loring Branch in Vienna, VA is located only 2.2 miles away. Three Stamps on Consignment locations are located within 1.2 miles of Pimmit. They are Chevy Chase, 7501 Leesburg Pike, Whole Foods Market, 7511 Leesburg Pike and Chevy Chase located at 7040 Haycock RD, Falls Church, VA. The Pimmit Branch is surrounded by city delivery routes. Customers may also choose to erect mail boxes and to receive delivery along the city carrier's line of travel.

The Pimmit Branch, an EAS-22 level, provides service 37.5 hours a week from 8:30 a.m. to 2:00 p.m. and 3:00 to 5:00 PM, Monday through Friday, and closed on Saturdays to 303 post office box customers. Daily retail window transactions average 441. There are no permit mail customers.

Taking all available information into consideration, the Postal Service has determined that the advantages outweigh the disadvantages and this final determination is warranted.

VII. NOTICES

Notify customers of the permanent discontinuance of the Pimmit Branch in Falls Church, VA and advise them of the hours of operation and services available at the Falls Church Finance Unit, VA 22040 and other alternative CPUs, stations/branches and post offices. Explain specific information on address changes and why the change is necessary.


 Dean J. Granholm
 Vice President
 Delivery and Post Office Operations
06/20/11
 Date



October 13, 2015

Elaine J. Mittleman
Attorney At Law
2040 Arch Drive
Falls Church, VA 22043

RE: FOIA Case No. 2015-FPRO-00932

Dear Ms. Mittleman:

This is an acknowledgement to your Freedom of Information Act (FOIA) request of September 10, 2015, in which you seek access to Postal Service records. Your request was received by this office on September 16, 2015.

Enclosed you will find a copy of the current lease for the Falls Church – Retail Unit Post Office.

Certain deletions have been made to these records under FOIA Exemption 6 (5 USC 552(b)(6)). Exemption 6 applies to personal information, including medical and personnel files, the disclosure of which would be a clearly unwarranted invasion of personal privacy. Any records which contain information concerning particular individuals may qualify for the exemption's protection.

Your request for the DAR (Decision Analysis Report) for the Falls Church Main Office is being denied. The requested information is exempt from disclosure pursuant to FOIA Exemption 3. Exemption 3 provides that agencies may withhold records that are exempted from disclosure by another statute that "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). We consider that 39 U.S.C. § 410(c)(2) operates independently as an exempting statute within the scope of Exemption 3.

Section 410(c)(2) of Title 39, U.S. Code, provides that "information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed" is exempt from the disclosure requirements of the FOIA. This section was enacted as part of the Postal Reorganization Act, 39 U.S.C. § 101 et seq., (1970), which established the Postal Service as an independent establishment of the executive branch and generally directed it to conduct its operations in accordance with sound business principles.

To determine what constitutes "good business practice" under § 410(c)(2), courts consider the customs of the commercial world, management techniques, and business law, as well as the standards of practice adhered to by large corporations. The Postal Service may withhold information of a commercial nature if large businesses would do the same. It would not be good business practice to release the requested information, and private businesses would not release information of this nature to the public. Disclosure of the DAR would reveal

USPS Facilities Office
PO Box 667180
Dallas, TX 75266-7180
214-819-7226
Vicky.m.miles@usps.gov

proprietary business information of the Postal Service. Thus, the DAR is properly withheld from disclosure under Exemption 3 and §410(c)(2).

You have the right to appeal any of the items denied to your request in writing to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100, within 30 days of the date of this letter. The letter of appeal should include statements concerning the denial, the reasons why it is believed to be erroneous, and the relief sought, along with copies of your original request, this letter of denial, and any other related correspondence. If you have any questions, please feel free to contact me.

Sincerely,

Vicky Miles

Vicky Miles
Program Analyst
Facilities Service Office

Enclosure

PO Box 667180
DALLAS, TX 75266-7180
214-819-7226
VICKY.M.MILES@USPS.GOV



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 28, 2015

Ms. Elaine J. Mittleman, Esq.
2040 Arch Drive
Falls Church, VA 22043

Re: Freedom of Information Act Appeal No. 16-023
Freedom of Information Act Request No. 2015-FPRO-00932

Dear Ms. Mittleman:

This responds to your letter dated November 10, 2015, which was received in our office on November 17, 2015. In your letter, you appeal the response to your request made under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

I. Background

By letter to the Manager of the Records Office dated September 10, 2015, you requested the following documents:

1. The lease for the Falls Church Finance Station, 800 West Broad Street, Falls Church, VA 22046. The property ID is 513126005.
2. The DAR [Decision Analysis Report] for the Falls Church Main Office project. On June 8, 2009, the Postal Service announced that the Falls Church post office retail operations were being relocated from 301 W. Broad Street to 800 W. Broad Street.

By letter dated October 13, 2015, Facilities Service Office Program Analyst Vicky Miles provided you with 65 pages of record material. The responsive material consisted of the following documents: Falls Church Retail Unit Lease, Lease Amendment 1, Lease Amendment 2, Lease Amendment 3, and Lease Amendment 4. The record material contained redactions pursuant to FOIA exemption 6, which applies to personal information. With regard to the DAR, the letter stated, in relevant part:

Your request for the DAR (Decision Analysis Report) for the Falls Church Main Office is being denied. The requested information is exempt from disclosure pursuant to FOIA Exemption 3. Exemption 3 provides that agencies may withhold records that are exempted from disclosure by another statute that establishes particular criteria for withholding or refers to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3). We consider that 39 U.S.C. § 410(c)(2) operates independently as an exempting statute within the scope of Exemption 3 . . . The Postal Service may withhold information of a commercial nature if large businesses would do the same. It would not be good business practice to release the requested information, and private

businesses would not release information of this nature to the public. Disclosure of the DAR would reveal proprietary business information of the Postal Service.

You filed the instant appeal on November 10, 2015. You stated that you were not challenging the redactions contained in the record material. Rather, you stated that you are "appealing the determination that the DAR is properly withheld" because the response to your FOIA request did not describe the information contained in the DAR, and the Postal Service already released the lease-related information in the DAR on USPS websites. You argued that the U.S. Court of Appeals for the Ninth Circuit found that decisions about locations for post offices as well as basic information about post offices is not commercial. *Carlson v. U.S. Postal Serv.*, 504 F.3d 1123 (9th Cir. 2007). You further argued that the U.S. Court of Appeals for the Fourth Circuit found that agencies cannot withhold entire documents unless all of the information in the document is exempt from disclosure. *Wickwire Gavin, P.C. v. U.S. Postal Serv.*, 356 F.3d 588, 596 (4th Cir. 2004).

After carefully reviewing your request and consulting with the District, we are releasing 5 pages of record material to you: Decision Analysis Report dated June 15, 2007. Certain data has been redacted pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3), and FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

II. Freedom of Information Act Analysis

A. Adequacy of Agency Search

In order to comply with the FOIA, an agency "must show beyond material doubt . . . that it has conducted a search reasonably calculated to uncover all relevant documents." *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). See also *Physicians for Human Rights v. U.S. Dep't. of Defense*, 675 F. Supp. 2d 149, 157 (D.D.C. 2009) ("The adequacy of an agency's search is measured by a standard of reasonableness, and is dependent upon the circumstances of the case" (citing *Weisberg*, 705 F.2d at 1351)). The FOIA "does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained." *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980); see also *Yeager v. Drug Enforcement Agency*, 678 F.2d 315, 321 (D.C. Cir. 1982) ("It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request." (citing *Nat'l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975))).

B. Propriety of Your Request and Postal Service Search

After careful review of your original request, set forth above, and after consulting with the responsible records custodian, we conclude that initially, the District failed to conduct a search reasonably calculated to reveal responsive records. Instead of conducting a search for the DAR and examining the document in accordance with postal policy found in Handbook, AS-353, the District relied on an assumption that the entire document was exempt from disclosure pursuant to FOIA Exemption 3 because it contained proprietary information. Upon receipt of your appeal, our office worked closely with the records custodian in order to ensure the execution of a reasonable search, examine the DAR to

determine if all or part of it could be disclosed, and provide you with any responsive records or sections thereof that were not exempt from disclosure.

C. FOIA Exemption 3(A)(ii) and 39 U.S.C. § 410(c)(2)

The FOIA generally requires federal government agencies (including the Postal Service) to disclose to a requester records in the agency's possession, custody, or control that are reasonably described by the requester, except when the records are exempted from disclosure by the FOIA. See 5 U.S.C. § 552(a)(3), (b). For example, Exemption 3(A)(ii) provides that the FOIA does not apply to matters that are: specifically exempted from disclosure by [another] statute . . . if that statute . . . establishes particular criteria for withholding or refers to particular types of matters to be withheld . . . 5 U.S.C. § 552(b)(3)(A)(ii).

The provision of the Postal Reorganization Act (PRA) codified at 39 U.S.C. § 410(c)(2) is an exempting statute within the scope of Exemption 3(A)(ii). See *Nat'l W. Life Ins. Co. v. U.S.*, 512 F. Supp. 454, 458-59 (N.D. Tex. 1980); *Piper & Marbury, L.L.P. v. U.S. Postal Serv.*, 2001 WL 214217, at *3 (D.D.C. Mar. 6, 2001), adopted, No. 99-2383 (D.D.C. Mar. 30, 2001); *Robinett v. U.S. Postal Serv.*, 2002 WL 1728582, at *3-5 (E.D. La. July 24, 2002); *Wickwire Gavin, P.C. v. U.S. Postal Serv.*, 356 F.3d 588, 592 & n.6 (4th Cir. 2004); *Airline Pilots Ass'n, Int'l v. U.S. Postal Serv.*, 2004 WL 5050900, at *5 (D.D.C. June 24, 2004); *Reid v. U.S. Postal Serv.*, 2006 WL 1876682, at *5-6 (S.D. Ill. July 5, 2006); *Am. Postal Workers Union v. U.S. Postal Serv.*, 742 F. Supp. 2d 76, 79-80 (D.D.C. 2010). We also consider the provision of the PRA codified at 39 U.S.C. § 410(c)(2) to operate independently of the FOIA.

In determining whether it would be "good business practice" to publicly disclose information of a commercial nature within the meaning of 39 U.S.C. § 410(c)(2), the Postal Service refers to the commercial world, management techniques in the commercial domain, and business law, as well as to the standards of practice adhered to by large private corporations—to what private businesses normally do. See *Wickwire Gavin, P.C.*, 356 F.3d at 592, 594; *Nat'l W. Life Ins. Co.*, 512 F. Supp. at 459; *Robinett*, 2002 WL 1728582, at *5; *Airline Pilots Ass'n, Int'l*, 2004 WL 5050900, at *6; *Reid*, 2006 WL 1876682, at *6; *Am. Postal Workers Union v. U.S. Postal Serv.*, 742 F. Supp. 2d at 82. (There is no requirement under 39 U.S.C. § 410(c)(2), though, that the Postal Service establish that public disclosure of the information would cause the Postal Service competitive harm. See *Wickwire Gavin, P.C.*, 356 F.3d at 593-97; *Am. Postal Workers Union*, 742 F. Supp. 2d at 82.) For this purpose, the Postal Service evaluates the information in the same manner as would a private corporation in the commercial world. See *Am. Postal Workers Union*, 742 F. Supp. 2d at 82. If private companies do not customarily publicly disclose comparable information, then the Postal Service is not required to publicly disclose information of a commercial nature. *Id.* at 82-83; *Wickwire Gavin, P.C.*, 356 F.3d at 594; *Airline Pilots Ass'n, Int'l*, 2004 WL 5050900, at *6.

As discussed above, you argued that the DAR is not exempt from disclosure because the U.S. Court of Appeals for the Ninth Circuit found that decisions about locations for post offices as well as basic information about post offices is not commercial. *Carlson v. U.S. Postal Serv.*, 504 F.3d 1123 (9th Cir. 2007). However, the court in *Carlson* did not conclude that decisions about the locations of post offices is not commercial. Rather, the court concluded that post office names, addresses, telephone numbers, hours of operation and

final collection times was not proprietary information as it was already publicly available on usps.com. *Id.* at 1130. Contrarily, the redacted information in the DAR is not publicly available. Likewise, the redacted information would not be made publicly available because it contains commercial information that could be used by our competitors when deciding the location of a retail unit or commercial mail receiving agency. Private companies would not customarily publicly disclose comparable information of a commercial nature. Therefore, the information has been redacted.

D. Exemption 6

Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Congress intended that the term "similar files" be interpreted broadly. *U.S. Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599-602 (1982) (citing H.R. Rep. No. 89-1497, at 11 (1966); S. Rep. No. 89-813, at 9 (1965); S. Rep. No. 88-1219, at 14 (1964)). As a threshold matter, any records which contain information pertaining to a particular individual may qualify for the exemption's protection. *Id.* at 601 (concluding that invocation of the exemption's protection was "not intended to turn upon the label of the file which contains the damaging information"). Here, employees' signatures are considered "similar files" within the meaning of Exemption 6.

Once an agency finds that a requested record qualifies for some level of Exemption 6 protection, FOIA requires the agency to balance the privacy interest of any individuals referenced in the records against any public interest in disclosure of the information. *Dep't of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Nat'l Ass'n of Retired Fed'l Employees v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989), *cert. denied*, 494 U.S. 1078 (1990). Courts have found cognizable privacy interests in personally identifying information such as an individual's name, signature, address, cell phone number and date of birth. *See, e.g., Washington Post Co.*, 456 U.S. at 600 (concluding that "[i]nformation such as place of birth, date of birth, date of marriage, employment history, and comparable data would be exempt from disclosure if contained in a file covered by the exemption"); *Associated Press v. Dep't of Justice*, 549 F.3d 62, 65 (2d Cir. 2008) ("Personal information, including a citizen's name, address, and criminal history, has been found to implicate a privacy interest cognizable under the FOIA exemptions."); *Gosen v. United States Citizenship & Immigration Servs.*, No. 13-CV-1091, 2014 WL 6809183, at *6 (D.D.C. Dec. 4, 2014) (noting "the significant privacy interest at stake when it comes to the identifying information of government employees [such as name, signature, and personal database code] in the context of FOIA requests"); *Performance Coal Co. v. U.S. Dep't of Labor*, 847 F. Supp. 2d 6, 17 (D.D.C. 2012) (concluding the agency properly redacted employees' government issued cell phone numbers); *Nat'l Right to Work Legal Def. & Educ. Found., Inc. v. U.S. Dep't of Labor*, 828 F. Supp. 2d 183, 192 (D.D.C. 2011) (noting that "there is generally 'a stronger case to be made for the applicability of Exemption 6 to phone numbers'" because "[d]isclosure of these numbers could subject the individuals to 'annoyance, embarrassment, and harassment in the conduct of their official and private lives'" (citations omitted). Recently, the District Court for the District of Columbia concluded that an agency employee possesses a privacy interest in his or her computer user ID and signature. *Strunk v. U.S. Dep't of State*, 845 F. Supp. 2d 38, 45-46 (D.D.C. 2012) (noting that the terminal user ID at issue was generally assigned to a single person or system user, contained unique characters and could be used to identify the specific employee accessing the record). The material at issue includes

employees' signatures. Thus, we conclude that the employees have a significant privacy interest in their signatures.

On the other side of the balance, the only public interest recognized under the FOIA is the extent to which the disclosure serves to "contribut[e] significantly to public understanding of the operations or activities of the government," *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989), or in other words, the extent to which the disclosure would shed light on the conduct of the government agency. *Id.* at 773.

Personnel information concerning individual, relatively low-level government employees, released in isolation, does not provide information about the operations or activities of the Postal Service. See *Deichman v. U.S.*, 2006 WL 3000448 at *7 (E.D. Va. 2006) (concluding Exemption 6 properly invoked by government for documents containing employee names and discussion of personnel matters of other employees). The burden is placed on the requester "to demonstrate the existence of a significant public interest in disclosure." *Lewis v. U.S. Dep't of Justice*, 867 F. Supp. 2d 1, 17 (D.D.C. 2011). See *Strunk*, 845 F. Supp. 2d at 46 (noting the plaintiff failed to articulate a FOIA public interest and finding that "no public interest is served by disclosure of the unique character constituting a terminal user ID, and therefore, the ID is properly withheld"). In this case, the disclosure of employees' signatures in no way contributes to the public's understanding of the operations or activities of the Postal Service. See *Horner*, 879 F.2d at 879 ("[S]omething, even a modest privacy interest, outweighs nothing every time."). Therefore, the information has been redacted.

III. Additional Responsive Records

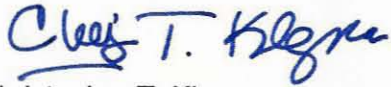
Please find the additional responsive records attached in hard copy form. The June 15, 2007 DAR responds to the second request in your letter asking for "the Decision Analysis Report [DAR] for the Falls Church Main Office project."

This is the final decision of the Postal Service regarding your right of access to the records requested pursuant to the FOIA. You may seek judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district in which the records are located, or in the District of Columbia.

We also note that as an alternative to litigation, you may wish to utilize the services of the Office of Government Information Services (OGIS), National Archives and Records Administration. OGIS offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

For the General Counsel,

A handwritten signature in blue ink, reading "Chris T. Klepac". The signature is written in a cursive, flowing style.

Christopher T. Klepac
Chief Counsel
Federal Compliance

cc: Ms. Miles
Mr. Lin

Enclosures



FIELD FACILITY DECISION ANALYSIS REPORT

**FALLS CHURCH, VA
22046**

**Retail Unit
Alternate Quarters**

EASTERN FACILITIES SERVICE OFFICE

RESTRICTED INFORMATION

June 15, 2007

**FIELD FACILITY DECISION ANALYSIS REPORT
FALLS CHURCH VA – RETAIL UNIT
ALTERNATE QUARTERS**

Ex. 3/39 USC 410(c)(2)

Name, State, Facility Type, ZIP Code: Falls Church, VA 22046	B/A Fin No: 67-0222 – L63 51-3126 – L41	Financial Summary				
Project Type: Alternate Quarters	Facility Fin No: 51-3126	Line 41 (Annual Rent)		Approval Threshold	Amount for Approval	1st year Variance
		Present*	Proposed			
		\$444,854				
Exception Criteria: Lease pre-emption	FMS Project No: C34999	Total Project Cost	Line 41			
	Office Level: 22		disc @ (%)			
			Line 3b	\$	\$	
			Line 61			
			Line 63			
Present Facility SF: 20,150 Main Post Office 3,145 Seven Corners Branch	Proposed Facility SF: [REDACTED]		Line 68			
Walk-In Revenue (FY06): N/A		TOTAL:				
Present Carriers by Zone & Type: n/a	Proposed Carriers by Zone & Type: n/a	FSS Impact (# routes): n/a	Installed Rented Proposed	Boxes	Sections	Counters
					40 36 37	6 4

*Present annual rent reflects the MPO and Seven Corners FU.

Ex. 3/39 USC 410(c)(2)

BACKGROUND/PROBLEM DEFINITION:

Falls Church VA Main Post Office

Occupied in 1975, the Falls Church VA Main Post Office (MPO) provides retail and delivery services for the 22043 and 22046 ZIP Code areas. It is located at 301 West Broad Street in a 20,150 square foot (SF) leased facility that houses [REDACTED]. There are two other leases that support the MPO for customer parking and employee parking. The employee parking is off site but within walking distance and the customer parking is adjacent to the MPO. The customer parking lease is with the City of Falls Church and is a month to month term. The City has notified the USPS that it intends to terminate the lease in conjunction with a large redevelopment plan but the date has not been specified. The loss of the customer parking area will obviously have a tremendous impact on the retail business and just as significantly it will limit access to the loading dock rendering the facility nearly useless because the larger vehicles that transport mail from the Merrifield VA Processing and Distribution Center (P&DC) will not be able to get to the loading dock with the mail for delivery. The City of Falls Church agreed to help the USPS find an alternate site or facility for the operation and appear sensitive to the impact of a parking lease termination. The employee parking is year to year lease renewing on May 1st, 2007 and therefore is under contract until April 30, 2008. The lease on the building expires 2/28/2013 with no termination so if the MPO is forced to vacate, negotiations to terminate the leasehold interest will move forward.

Ex. 3/
39 USC
410(c)(2)

Main Post Office - \$322,199 per year – expires 2/28/2013
Customer parking - \$31,200 per year – expires with 30 days notice
Employee Parking - \$21,600 per year – expires 5/1/2008 possibly renewable

Falls Church VA Seven Corners FU

Occupied in May 1958, The Falls Church VA, Seven Corners Finance Unit provides retail services for 22044 ZIP Code. It is located at 6375 Seven Corners Center Falls Church VA in a 3,145 SF leased facility. The lease expires June 30, 2008 and new lease will almost certainly be at a higher rate. The Seven Corners Finance Unit (FU) is part of a strip shopping center with shared parking where our customers sometimes find it difficult to find parking. Seven Corners post office boxes occupancy is a percent. [REDACTED]

Seven Corners Branch - [REDACTED] per year - expires 6/30/2008.

Ex 3/ 39 USC 410(c)(2)

ALTERNATIVES ANALYZED

[REDACTED]

ALTERNATIVES ANALYZED AND ELIMINATED

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Exhibit 1:

List Post Offices and any carrier annexes within a ten-mile radius of this facility. Provide facility name, distance from existing project, provide total building square footage (from FMSWIN) and total workroom square footage, and number of carriers by ZIP Code and type housed in the nearby facilities.

City, State	Unit	ZIP Code	Distance (miles)	Total Sq. Ft.	Wkrm Sq. Ft.	Required Matrix SF (Note 1)	Current Deficiency	Zone	City	Rural	Sustaining Space Available
Arlington VA	North Sta	22207	2.30	9,519	4,150		%	22207	41		No
Falls Church VA	Pimmit Br	22043	2.70	1,200	130		%	n/a	0	0	No
Vienna VA	Dunn Loring	22027	2.90	1,672	130		%	n/a	0	0	No
Merrifield VA	MPO	22116	2.90	plant	n/a		n/a	n/a	0	0	No
McLean VA	MPO	22101	3.60	9,360	4,325		%	22101	39	0	No
Annandale VA	MPO	22003	3.70	14,798	8,650		%	22003	52	0	No
Arlington VA	Buckingham	22203	3.80	7,137	3,100		%	22203	20	0	No
Arlington VA	MPO	22210	4.20	under con	n/a		n/a	22210	0	0	No
Arlington VA	South	22204	4.70	15,914	9,130		%	22204	38	0	No
Alexandria VA	Lincolnia	22311	4.90	12,500	6,940		%	22311	13	0	No

NOTES:

1.

RECOMMENDATION:

FIELD FACILITY DECISION ANALYSIS REPORT
FALLS CHURCH VA - RETAIL UNIT
ALTERNATE QUARTERS
SIGNATURE PAGE

PREPARED BY:

[REDACTED]
Samuel G. Spicknall
Postal Operations Analyst
Eastern Facilities Service Office

7/31/07
Date

Ex. 6

REVIEWED BY:

[REDACTED]
Anita A. Moss
Manager, Facility Requirements
Eastern Facilities Service Office

Date

SPONSORED BY:

[REDACTED]
Kevin L. McAdams
Manager, Post Office Operations
Northern Virginia District

8-9-07
Date

Ex. 6

[REDACTED]
Michael S. Furey
District Manager
Northern Virginia District

8-14-07
Date

Ex. 6

APPROVED BY:

[REDACTED]
Thomas Russell
Manager
Eastern Facilities Service Office

9-7-07
Date

Ex. 6

APPROVED BY:

[REDACTED]
Jerry D. Lane
Vice President, Area Operations
Cap Metro Area

9/14/07
Date

Ex. 6



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

January 15, 2016

Ms. Elaine J. Mittleman, Esq.
2040 Arch Drive
Falls Church, VA 22043

Re: Freedom of Information Act Appeal No. 16-023
Freedom of Information Act Request No. 2015-FPRO-00932

Dear Ms. Mittleman:

This responds to your email dated January 14, 2016, alleging that the Postal Service's search for responsive records pursuant to the above-referenced Freedom of Information Act (FOIA) request was inadequate.

By letter to the Manager of the Records Office dated September 10, 2015, you requested the following documents:

1. The lease for the Falls Church Finance Station, 800 West Broad Street, Falls Church, VA 22046. The property ID is 513126005.
2. The DAR [Decision Analysis Report] for the Falls Church Main Office project. On June 8, 2009, the Postal Service announced that the Falls Church post office retail operations were being relocated from 301 W. Broad Street to 800 W. Broad Street.

By letter dated October 13, 2015, Facilities Service Office Program Analyst Vicky Miles provided you with the Falls Church Retail Unit lease, but declined to provide you with the DAR under FOIA Exemption 3 as it contained information of a commercial nature. On November 10, 2015, you filed an appeal challenging the determination that the DAR is properly withheld. By letter dated December 23, 2015, this Office provided you with the Falls Church Main Office DAR dated June 15, 2007, with certain data redacted pursuant to FOIA Exemption 3, 5 U.S.C. § 552(b)(3), and FOIA Exemption 6, 5 U.S.C. § 552(b)(6). The DAR itself references the Falls Church Post Office located at 301 W. Broad Street.

In an email dated January 14, 2015, you stated that the June 15, 2007 Falls Church Main Office DAR is the wrong document. You clarified that you are seeking the 2009 Falls Church Main Office DAR that includes references to the Pimmit Branch. However, these details – the 2009 Falls Church Main Office DAR with references to the Pimmit Branch – were absent from your original FOIA request dated September 10, 2015. We conclude that the Postal Service's search for responsive records was adequate based on the information that you provided in your original FOIA request. The additional details that you provided *via* email about the document that you are seeking constitutes a new FOIA request, and will be processed by the Records Office accordingly and assigned a new case number.

Sincerely,

Natalie A. Bonanno

Natalie A. Bonanno
Ethics Counsel
United States Postal Service

cc: Ms. Eyre
Ms. Chavannes-Battle



February 4, 2016

Elaine J. Mittleman
Attorney At Law
2040 Arch Drive
Falls Church, VA 22043

RE: FOIA Case No. 2016-FPRO-00262

Dear Ms. Mittleman:

This is an acknowledgement to your Freedom of Information Act (FOIA) request of January 14, 2016, in which you ask we do an additional search of our files for a second DAR on the Falls Church Main Office with reference to the Pimmit Branch Post Office

Based on your description of records sought, a second search was conducted of the files; and despite this diligent search, we were unable to locate responsive documents.

You have the right to appeal any of the items denied to your request in writing to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100, within 30 days of the date of this letter. The letter of appeal should include statements concerning the denial, the reasons why it is believed to be erroneous, and the relief sought, along with copies of your original request, this letter of denial, and any other related correspondence. If you have any questions, please feel free to contact me.

Sincerely,

Vicky Miles

Vicky Miles
Program Analyst
Facilities Service Office

USPS Facilities Office
PO Box 667180
Dallas, TX 75266-7180
214-819-7226
Vicky.m.miles@usps.gov